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ATTACHED AND 2. (6+14TH VIOLATION, DENIAL OF RIGHT TO SELF REPRESENTATION)

STATEMENT OF FACTS

PETITIONER ON 16 MARCH 05 MADE 2 PROFFERED TIMELY MOTIONS THE FIRST FOR SELF REPRESENTATION PER HIS 6TH U.S. CONST. AMENDMENT AGUARANTEED FEDERAL RIGHT AND SECONDLY A MARSDEN, KNOWINGLY + INTELLIGENTLY AS THE COURT FOUND IN FARETTA, "[T]HE RECORD (R.T. EXCERPT) AFFIRMATIVELY SHOWS THAT [APPELLANT] WAS LITERATE, COMPETENT, AND UNDERSTANDING, AND THAT HE WAS VOLUNTARILY EXERCISING HIS INFORMED FREE WILL" (422 U.S. AT p. 835, 95 S.CT. AT p. 2541.) THE TRIAL COURTS DENIAL OF APPELLANT'S MOTION, OR RATHER FAILURE TO RULE IF PREDJUDICIAL ON 16 MARCH 05 WAS ERROR. STATEMENT OF FACTS. PETITIONERS FIRST APPOINTED COUNSEL CONFLICTED OFF WITHOUT INITIATING ANY PERSONAL CONSULTATION WITH DEFENDANT. HIS NAME WAS MR. VICK ERICSEN. PETITIONER HAD'NT MET WITH ANY ATTORNEY DESPITE HIS REQUEST TO SPEAK WITH ONE UPON HIS SEIZURE AND ARREST ON 19 MARCH 04 UNTIL THE DAY OF HIS PRELIMINARY HEARING 28 APR. 04. AT THAT POINT HE HAD MET WITH MR. PLUMMER FOR 10 MINUTES FOR THE FIRST TIME PRIOR TO THE PRELIMINARY HEARING. UPON RAISING A MARSDEN MOTION, MR. PLUMMER AT SIMPLY ACQUIESCED TO THE MOTION, AND THUS WAS SUBSEQUENTLY RELIEVED SEE ALSO EXHIBIT A PAGE 8 R.T EXCERPT (MARSDEN HEARING) LINES 1-15 AS FOLLOWS' THE COURT— IF WHAT YOU'RE TELLING ME IS THAT YOU HAVE A DOUBT ABOUT YOUR PRESENT MENTAL COMPETENCE TO PROCEED WITHIN THE MEANING OF PENAL CODE SECTION 1368, ET SEQUITUR, I REJECT THAT SUGGESTION OUTRIGHT BASED UPON MY INTERACTION WITH YOU HERE THIS AFTERNOON I CANNOT GET INSIDE YOUR HEAD IN A MANNER OF SPEAKING, BUT CLEARLY THE MANNER WHICH YOU HAVE PRESENTED HERE THIS AFTERNOON, THE MANNER IN WHICH YOU HAVE COGENTLY AND LOGICALLY SPOKEN AT LENGTH CONCERNING YOUR CASE, ALL OF THAT CAUSES THE COURT TO CONCLUDE THAT YOU'RE

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ABSOLUTELY COMPETENT, AS A MATTER OF LAW, AT THIS TIME SUCH THAT THESE CRIMINAL PROCEEDINGS WILL GO FORTH WITHOUT UNDUE INTERRUPTION FOR PURPOSES OF A 1368 EXAMINATION EVALUATION AND HEARING. I FIND NOT EVEN A SCINTILLA OF EVIDENCE AS TO SUPPORT OR WARRANT THE SUSPENSION OF CRIMINAL PROCEEDINGS IN THIS CASE. SEE EXHIBIT "A" PAGE 8, R.T. EXCERPT 21, LINE 26; AND SEE EXHIBIT A, PAGE 9, R.T. EXCERPT 22, LINES 1-6 - THE COURT: THE COURT AT THIS TIME WILL RELIEVE MR. PLUMMER AS APPOINTED COUNSEL OF RECORD FOR MR. BURTON. STATEMENT OF CASE - ON 11-09-04, THE HON. JUDGE PAECKEL APPOINTED CONFLICTING COUNSEL NEWTON; DEFENDANT MADE A THRESHOLD MARSDEN MOTION. THAT WAS DENIED, THE COURT FAILED TO INQUIRE INTO THE APPOINTMENT OF CONFLICTING COUNSEL SEE EXHIBIT "D", PAGE 20, R.T. EXCERPT 0033, LINES 1-21; SEE EXHIBIT A "R.T. EXCERP 0345, PAGE 10 STATES; THE DEFENDANT MAKES A MOTION TO INVOKE HIS 6TH AMENDMENT RIGHT TO REPRESENT HIMSELF AND [ALSO] REQUESTS A MARSDEN MOTION. THE COURT WILL ADDRESS THE DEFENDANTS MOTION AFTER THE IN LIMINE MOTIONS HAVE BEEN COMPLETED. ALSO SEE DEFENSE MOTION TO DISMISS BECAUSE DEFENSE FEELS THE CHARGES HAVE NOT BEEN SUBSTANTIATED. THIS MOTION IS DENIED. AT 3:30 COURT DENIED MARSDEN, FAILED TO INQUIRE AND RULE ON 6TH AMEND MOTION FOR SELF REPRESENTATION FAILED TO MAKE A FULL WINDHAM INQUIRY ABUSED HER DISCRETION, SEE EXHIBIT A PAGE 8 R.T. EXCERPT 167 LINE 28 DEFENDANT: AT THIS TIME, YOUR HONOR, I WOULD LIKE TO (CONTINUED ON PAGE 14 EXHIBIT A, EXCERPT 168 LINE 1 AND 2) INVOKE MY SIXTH AMENDMENT RIGHTS TO REPRESENT MYSELF AS COUNSEL. SEE EXHIBIT A PAGE 14 R.T. EXCERPT 168 LINES 3 THRU 12; THE COURT - ALL RIGHT, SIR, I'LL TAKE THAT UP IN A MOMENT. I WANT TO FIRST DEAL WITH THE ISSUES THAT ARE ON CALENDAR FOR TODAY. I KNOW OVER THE COURSE AND HISTORY OF THIS CASE, ISSUES LIKE THAT HAVE BEEN RAISED BEFORE. SO I'LL SET ASIDE TIME AT THE END OF TODAY'S

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HEARING TO HEAR THOSE FROM YOU. ALL RIGHT. AND THEN IF I GRANT YOUR MOTION, YOU WILL HAVE THE OPPORTUNITY TO ADDRESS ANYTHING WE'VE ADDRESSED. THE DEFENDANT: EXCUSE ME (EXHIBIT A R.T. EXCERPT 0348) WOULD LIKE A MARSDEN ALSO. THE COURT: ALL RIGHT. WE'LL DO THAT, ["TOO" EMPHASIS ADDED]. SEE EXHIBIT A PAGE 15, R.T. EXCERPT 179 LINES 15-28 (PAGE 10 EXCERPT) THE COURT- OKAY. ANYTHING ELSE THAT WE NEED TO ADDRESS? AND IF NOT, WHAT I'LL BE DOING IS EXCUSE MS. HANNAH -- TAKE A BREAK AT THIS POINT AND THEN RESUME WITH JUST MR. ADAIR AND MR. BURTON SO WE CAN DEAL WITH ISSUES RELATED TO THE MARSDEN MOTION. ANYTHING ELSE? MS. HANNAH: I DON'T THINK SO.

THE COURT: OKAY, THEN I WILL BE EXPECTING COUNSEL TO REPORT HERE - LETS SEE, IF WE'RE GOING TO WANT TO GET STARTED WITH PANEL, THEY WON'T BE READY UNTIL 9:15, THERE MAY HAVE BEEN ISSUES THAT WOULD HAVE DEVELOPED BETWEEN NOW AND THEN. SO I'D PROBABLY LIKE YOU HERE AT 8:45 ON WEDNESDAY -- MS. HANNAH: OKAY. THE COURT: -- THE 23RD. MS. HANNAH: OKAY. SEE PAGE 16 OF EXHIBIT A, R.T. EXCERPT 180, LINES 4 THRU 5.; THE COURT: OKAY. VERY GOOD. WE'LL BE IN RECESS FOR 15 MINUTES. SEE EXHIBIT A PAGE 17 R.T. EXCERPT 181, LINES 15 THRU 17. THE COURT: OKAY. WHAT IS THE -- WELL, LET ME FIRST REVIEW WITH YOU. I BELIEVE IN THE PAST YOU HAD A "MARSDEN HEARING" BUT NOT IN FRONT OF ME. SO I "WANTED TO JUST MAKE SURE."

STATEMENT OF FACTS - THEREFORE THE TRIAL JUDGE WAS AWARE OF PETITIONER'S PREVIOUS MARSDEN OF WHICH HE HAD ALREADY BEEN DEEMED LAWFULLY COMPETENT BY THE HON. JUDGE PRECKLE NOV. 5. 04.

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STATEMENT OF FACTS

PETITIONER'S CONVICTION AND SENTENCE IS UNCONSTITUTIONAL CLEARLY HIS 6TH AND 14TH AMENDMENT DUE PROCESS AND EQUAL PROTECTION CLAUSES HAVE BEEN PREJUDICALLY AND ERRONEOUSLY VIOLATED BY AN IRRATIONAL TRIER OF FACT WHEN FEDERALLY GUARANTEED U.S. CONSTITUTIONALLY RIGHT TO SELF REPRESENTATION AS THE R.T. EXCERPTS CLEARLY SHOWN PETITIONER HAD BEEN LAWFULLY CONCLUDED TO BE ABSOLUTELY COMPETENT PRIOR TO HIM INVOKING HIS 6TH AMEND RIGHT TO SELF REPRESENTATION

PETITIONER INVOKED HIS FIRST 6TH AMENDMENT RIGHT TO SELF REPRESENTATION ON 16 MARCH 05, NOT 24 MARCH 05, ON 24 MARCH 05 PETITIONER RE-ITERATED HIS PREVIOUS INVOKED RIGHT PER U.S. CONST. AMEND. WITH A FARETTA PROSE VERBAL MOTION, SEE EXHIBIT A PAGE 6 R.T EXCERT 0348 DATED 3-16-05 - STATES THE CORRECTLY STATED FACTUAL MOTIONS MADE BY DEFENDANT AS QUOTED "SPECIFICALLY" "THE DEFENDANT MAKES A MOTION TO INVOKE HIS 6TH AMENDMENT RIGHT TO REPRESENT HIMSELF AND ["ALSO"], REQUEST A MARSDEN. "THE COURT WILL ADDRESS THE DEFENDANT'S MOTION AFTER THE LIMINE MOTIONS HAVE BEEN COMPLETED." AS THE PETITIONER MADE HIS SECOND "FUNDAMENTALLY SEPERATE" MARSDEN MOTION. AS INDICATED PREVIOUSLY THE COURT RESPONDED AND ACKNOWLEDGED TWO INDIVIDUAL MOTIONS BY STATING, IT ON EXHIBIT A PAGE 14 LINE 12 STIPULATED AS THE COURT: (R.T. EXCERT 168) "ALL RIGHT. WE'LL DO THAT ["TOO."] IT IS FURTHER NOTED THAT ON 11-05-04 APPROXIMATELY 4 MONTH'S PRIOR TO PETITIONER'S 16 MARCH 05 INVOCATION OF HIS U.S CONST. 6TH AMENDMENT RIGHT TO SELF REPRESENTATION AS FEDERALLY GUARANTEED, THE HONORABLE JUDGE ALLAN PRECKLE FOUND PETITIONER LAWFULLY THAT COMPETENT TO STAND TRIAL AND STATED IMPHATICALLY THAT PROCEEDINGS WILL NOT BE SUSPENDENT FOR A 1368 EXAMINATION. SEE EXHIBIT A PAGE 8 EXCERPT 21 LINES 15.

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PROCEEDINGS WILL GO FORTH WITHOUT UNDUE INTERRUPTION FOR PURPOSES OF A 1368 EXAMINATION EVALUATION AND HEARING. I FIND NOT EVEN A SCINTILLA OF EVIDENCE AS TO SUPPORT OR WARRANT THE SUSPENSION OF CRIMINAL PROCEEDINGS IN THIS CASE. SEE EXHIBIT "A" PAGE 13, ART 7 PARAGRAPH 7, LINE 25 THRU 28, SEE ALSO EXHIBIT "A" PAGE 14, PARAGRAPH 1 & 2, LINES 1 THRU 12, AS STATED; THE DEFENDANT: AT THIS TIME, YOUR HONOR, (ON 16 MARCH 05) I WOULD LIKE TO INVOKE MY SIXTH AMENDMENT RIGHTS TO REPRESENT MYSELF AS COUNSEL. THE COURT: ALL RIGHT. SIR, I'LL TAKE THAT UP IN A MOMENT. I WANT TO FIRST DEAL WITH THE ISSUES THAT ARE ON CALENDAR FOR TODAY, I KNOW OVER THE COURSE AND THE "HISTORY" OF THIS CASE ISSUES LIKE THAT HAVE BEEN RAISED BEFORE. SO I'LL SET ASIDE TIME AT THE END OF TODAYS HEARING TO HEAR "THOSE" FROM YOU. ALL RIGHT THEN IF I GRANT YOUR MOTION, YOU WILL HAVE THE OPPORTUNITY TO ADDRESS ANYTHING WE'VE ADDRESSED

THE DEFENDANT: EXCUSE ME. I WOULD LIKE A MARSDEN (ALSO) THE COURT: ALL RIGHT. WE'LL DO THAT [TOO.] [EMPHASIS ADDED] (ARGUMENT) SEE PEOPLE V. JOSEPH, (CAL 1983) 196 CAL. RPTR. 339, 34 CAL. 3d 936. AS THE EXCERPT QUOTED FROM THE TRANSCRIPT INDICATES, THE TRIAL JUDGE RECOGNIZED THAT APPELLANT PROFFERED TWO SEPARATE MOTIONS, ONE TO RELIEVE ATTORNEY ARMSTRONG AND THE OTHER TO REPRESENT HIMSELF. THE LATTER WAS HEARD AFTER THE FORMER WAS GRANTED AT THAT TIME, APPELLATE MADE IT CLEAR THAT HE AND HE ALONE" WANT[ED] TO PUT ON THE DEFENSE...." IT SHOULD BE NOTED

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THAT THESE TWO MOTIONS ARE FUNDAMENTALLY DIFFERENT. WHETHER A MOTION TO RELIEVE COUNSEL SHOULD BE GRANTED DEPENDS NOT ON WHETHER AN ACCUSED POSSESSES THE CAPACITY TO WAIVE COUNSEL, BUT RATHER ON WHETHER "FAILURE TO DO SO WOULD SUBSTANTIALLY IMPAIR OR DENY THE RIGHT TO ASSISTANCE OF COUNSEL..." (PEOPLE V. McKENSIE (1983) 34 CAL. 3d 616, 629, 194 CAL.RPTR. 462, 668 P.2d 769; PEOPLE V. MARSDEN (1970) 2 CAL.3d 118, 123-124, 84 CAL.RPTR. 156, 465 P.2d 44; SEE PEOPLE V. MUNOZ (1974) 41 CAL.APP.3d 62, 66, 115 CAL.RPTR 726.) MOREOVER, IT IS NOT AT ALL UNCOMMON FOR A FARETTA MOTION TO ACCOMPANY AN ACCUSED'S REQUEST TO DISMISS COURT-APPOINTED COUNSEL. (SEE, e.g. PEOPLE V. WINDHAM, SUPRA 19 CAL.3d AT P. 125, 137 CAL.RPTR. 8, 560 P.2d 1187; PEOPLE V. RUIZ (1983) 142 CAL.APP.3d 780, 785-787, 191 CAL.RPTR. 249.) THE MERE FACT THAT THE TWO MOTIONS ARE MADE IN THE SAME PROCEEDING DOES NOT COMPEL THE CONCLUSION THAT THE PRO SE MOTION AND ITS ATTENDANT WAIVERS ARE UNINTELLIGENT OR UNKNOWING.

PETITIONER ASSERTS THAT SOME FOUR MONTH'S BEFORE TRIAL (6 MARCH 05, A STRIAL BEGAN 19 JUL 05, AND MOTION WAS TIMELY, INTELLIGENT AND KNOWING, PETITIONER HAD ALREADY LAWFULLY BEEN DEEMED COMPETENT, AND TRIAL JUDGE ACKNOWLEDGED THE HISTORY OF THE CASE. IT WAS PREJUDICIAL AND VIOLATED PETITIONERS 6TH AND 14TH U.S. CONST AMENDMENT RIGHTS TO SELF REPRESENTATION. AS QUOTED IN PEOPLE V. JOSEPH (AMENDMENT), (CAL. 1983) 196 CAL.RPTR. 339, 34 CAL. 3d 936 [] THE ONLY CLAIM OF ERROR THIS COURT NEED ADDRESS IS APPELLANT'S CONTENTION THAT THE TRIAL

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COURT ERRED IN DENYING HIS TIMELY MOTION TO REPRESENT HIMSELF. (FARETTA V. CALIFORNIA (1975) 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562.) THE RECORD INDICATES THAT AN UNEQUIVOCAL ASSERTION OF APPELLAN'TS DESIRE TO PROCEED PRO SE WAS MADE WELL IN ADVANCE OF TRIAL. AS A RESULT, THE DENIAL OF *341 [67 P.2d 845] THAT MOTION CONSTITUTED ERROR. SINCE THE ERRONEOUS DENIAL OF A TIMELY PROFFERED FARETTA MOTION IS REVERSIBLE PER SE, THE JUDGEMENT OF CONVICTION MUST BE SET ASIDE.

STATEMENT OF FACTS - ON 16 MARCH 05 THE TRIAL JUDGE DENIED PETITIONERS MARSDEN BUT FAILED TO RULE ON PETITIONERS FIRST 6TH AMENDMENT MOTION FOR SELF REPRESENTATION. SEE EXHIBIT A. R.T. (EXCERPT) PAGE 44, LINES 18, 19, 20, 22, 24, 25, 26, 27, 28. THE FOLLOWING - THE COURT: TO THE EXTENT THERE HAVE BEEN ANY DIFFICULTIES IT SEEMS LIKE SOME OF THEM HAVE BEEN CAUSED BY MR. BURTON NOT EITHER WANTING TO SIGN CONSENT FORMS OR MAKING IT MORE DIFFICULT -- PREFER TO HAVE FACE-TO-FACE MEETINGS WITH HIS ATTORNEYS -- IT'S MORE EFFICIENT TO COMMUNICATE IN WRITING OR HAVE ANOTHER COME ON YOUR ATTORNEY'S BEHALF. SO I DON'T THINK THAT'S A BASIS TO CONCLUDE THAT THERE IS NOT EFFECTIVE REPRESENTATION. SO THE MARSDEN MOTION IS DENIED, AND THE TRANSCRIPT WILL BE SEALED. ARGUMENT - RIGHT TO PRIVATE CONSULTATION - SEE - 96 A.L.R. 5TH [DENIAL OF OR INTERFERENCE WITH ACCUSED RIGHT TO HAVE ATTORNEY INITIALLY CONTACT ACCUSED; SUPERSEDING 18 A.L.R. 4TH 669, TEXT, R 355].

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STATEMENT OF FACTS - IT IS FURTHER CONTENDED THAT UPON PLACING PETITIONER UNDER A1368 HOLD THE COURT PREJUDICIALLY AND ERRONEOUSLY VIOLATED PETITIONER'S 5TH AND FOURTEENTH U.S. CONST. AMENDMENT DUE PROCESS AND EQUAL PROTECTION CLAUSES BY NOT GIVING HIM THE FIFTH AMENDMENT REQUIREMENTS OF ESTELLE -

ARGUMENT - THE FIFTH AMENDMENT REQUIREMENTS OF ESTELLE IN WHICH THE SUPREME COURT HELD THAT A DEFENDANT HAS A FIFTH AMENDMENT RIGHT TO BE INFORMED THAT HE NEED NOT CONSENT TO A COURT-ORDERED PSYCHIATRIC EXAMINATION IN WHICH THE RESULTS COULD BE USED AGAINST HIM AT TRIAL. U.S.CA. CONST. AMENDS. 5,6 MURTISHAW V. WOODFORD, 255 F.3d 926 (9TH CIR. 2001). SEE EXHIBIT "A" PAGE 59 R.T. EXCERPT, 218/250 LINES 1-5 A THE COURT: MR ADAIR, DO I NEED TO ADVISE HIM OF HIS CONSTITUTIONAL STATUTORY RIGHTS ON THE RECORD? MR. ADAIR: NO, YOUR HONOR. THE COURT: ALL RIGHT.

STATEMENT OF FACTS - AFTER PETITIONER'S COMPETENCE WAS ALLEGEDLY [RESTORED] ON 23 MAY 05 BY HON. JUDGE KRAUL, PETITIONER FILED A FARETTA PRO SE MOTION IN CONJUNCTION WITH A 995 MOTION STAMPED FILED 27 MAY 05, HOWEVER FOR THIS PARTICULAR ARGUMENT PETITIONER STIPULATES TO THE FARETTA PRO SE MOTION, ON IT'S FACE AND THE MEMORANDUM OF POINTS AND AUTHORITIES ON IT'S FACE. PETITIONER DENIES R.T. TRANSCRIPT 0122, 0123, AND 0124. SEE EXHIBIT A PAGE 62, R.T. EXCERPT 0121, SEE MOTION FOR FARETTA PRO SE INDICATED BY ARROW i.e ← HERE) SEE EXHIBIT A PAGE 62 R.T. EXERPT 251, DATED 6-1-05. HON. JUDGE EXHAROS PRESIDING. PETITIONER STIPULATES LINES 16 [redacted] THE COURT: OKAY I HAVE A HAND WRITTEN MOTION HERE. PETITIONER STIPULATE THE FACE OF THE MOTION ONLY R.T. EXCERPT [redacted]

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RELEVANT FACTUAL BACK GROUND.

PETITIONER RETURNED TO COURT ON 3-24-05. SEE EXHIBIT A, PAGE 51, RT, EXCERPT 210, LINES, 1-4, 7-20, 22-28. SEE ALSO EXHIBIT "A", PAGE 52, RT. EXCERPT 211, LINES 1-5, 16-28. - SAN DIEGO, CALIFORNIA, THURSDAY, MARCH 24, 2005; 9:10 A.M. THE COURT: THIS IS PEOPLE VERSUS BURTON, COUNSEL AND DEFENDANT ARE PRESENT -- BUT FIRST I NEED TO -- WE NEED TO PUT A FEW THINGS ON THE RECORD. BASED UPON COMMUNICATIONS WITH THE JAIL YESTERDAY, THE COURT HAS INFORMED THAT THERE WERE MEDICAL ISSUES AND EVALUATIONS BY DOCTORS, HE WASN'T ABLE TO BE TRANSPORTED. SO I NEED TO KNOW IF THERES ANYTHING FURTHER THAT NEEDS TO BE PUT ON THE RECORD REGARDING THAT, ANY NEW INFORMATION OR ANYTHING ADDITIONAL THAT'S BEEN DETERMINED? MR. ADAIR: "I'M NOT AWARE OF ANYTHING", YOUR HONOR. THE COURT: ALL RIGHT, AND MR. BURTON IS HERE TODAY. -- AND SO WE NEED TO PROCEED, -- I NEED TO KNOW WHAT OTHER MOTIONS ARE GOING TO BE HEARD, MR. ADAIR, THE DEFENDANT: FARETTA (PRO SE!) THE COURT: ALL RIGHT. FARETTA MOTION (PRO SE) AND MARSDEN. MR. ADAIR: AS I INFORMED YOU "YESTERDAY", I HAVE A SERIOUS QUESTION AS TO WHETHER OR NOT MR. BURTON IS ABLE TO ASSIST IN HIS DEFENSE IN A RATIONAL MANNER AT THIS TIME. THE DEFENDANT: OBJECTION, YOUR HONOR. THE COURT: WELL, MR. BURTON I'M GOING TO HEAR FROM MR. ADAIR FIRST, -- STATE THAT FOR THE RECORD: MR. ADAIR: THE -- BECAUSE HE NEEDS TO COOPERATE IN HIS DEFENSE. AND IF HE'S NOT ABLE TO DO THAT, HE'S GOING TO BE VERY HANDICAPPED. AND SO I'M MAKING A MOTION UNDER 1367/1368 OF THE PENAL CODE. BECAUSE LIKE I SAID, I HAVE A SERIOUS QUESTION ABOUT HIS ABILITY TO COOPERATE IN A RATIONAL MANNER OR HIS CAPACITY TO COOPERATE AT THIS TIME. THE COURT: ALL RIGHT. LET ME JUST MAKE A FEW INQUIRIES. WHEN WE WERE IN COURT LAST WEEK, WE HAD

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PROBABLY ABOUT A 45-MINUTE MARSDEN HEARING. AND AT THAT POINT THERE WERE DEFINITELY DISAGREEENTS BETWEEN MR. BURTON AND YOURSELF AS TO HOW THE CASE WAS BEING CONDUCTED. BUT AT THAT POINT YOU DID NOT RAISE THE MOTION ON COMPETENCY. (SEE NOW EXHIBIT "A", PAGE 53, RT EXCERPT 212, LINES 11, 15, 17) ~~28~~ Error Rub - MR. ADAIR: --SINCE MR. BURTON AND I DISAGREE, HE NEEDS AN EXAMINATION. ARGUMENT - REPRESENTATION OF A CRIMINAL DEFENDANT ENTAILS CERTAIN BASIC DUTIES. COUNSEL'S FUNCTION IS TO ASSIST THE DEFENDANT AND HENCE COUNSEL OWES THE CLIENT A DUTY OF LOYALTY, A DUTY TO AVOID CONFLICTS OF INTEREST. SEE CUYLER V. SULLIVAN, SURRA, 466 U.S., AT 346, 90 S.CT. AT 1717; MOREOVER, IT IS DIFFICULT TO MEASURE THE PRECISE EFFECT ON THE DEFENSE OF REPRESENTATION CORRUPTED BY CONFLICTING INTERESTS. GIVEN THE OBLIGATION OF COUNSEL TO AVOID CONFLICTS OF INTEREST AND THE ABILITY OF TRIAL COURTS TO MAKE EARLY INQUIRY IN CERTAIN SITUATIONS LIKELY TO GIVE RISE TO CONFLICTS, SEE, e.g., FED. RULE. CRIM. PROC. 44(c), IT IS REASONABLE FOR THE CRIMINAL JUSTICE SYSTEM TO MAINTAIN A FAIRLY RIGID RULE OF PRESUMED PREDJUDICE FOR CONFLICTS OF INTEREST. PREDJUDICE IN THESE CIRCUMSTANCES IS SO LIKELY THAT CASE-BY-CASE INQUIRY INTO PREDJUDICE IS NOT WORTH THE COST. 466 U.S. AT 659, 104 S.CT. AT 2047; SEE NOW EXHIBIT "A" PAGE

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CONTENTION

STATEMENT OF FACT A THE TRIAL JUDGE VIOLATED PETITIONERS 6TH US. CONST DUE PROCESS CLAUSE AND THE 14TH US CONST AMENDMENT DUE PROCESS AND EQUAL PROTECTION CLAUSES ARGUMENT) IN DENYING HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL FOR: MARSDEN MOTION (DEN)

QUOTED IN PEOPLE V. MARSDEN (CAL. 1970) 84 CAL RPTR. 156, 2 CAL. 3d 118 [2 CAL 3d 123] [2] [3]

WE START WITH THE PROPOSITION IN GIDEON V. WAINWRIGHT (1963) 372 U.S. 335, 83 S.CT. 792, 9 L.Ed.2d 799, THAT CRIMINAL DEFENDANTS ARE ENTITLED UNDER THE CONSTITUTION TO THE ASSISTANCE OF COURT APPOINTED COUNSEL IF THEY ARE UNABLE TO EMPLOY PRIVATE COUNSEL. 'A DEFENDANT'S RIGHT TO A COURT-APPOINTED COUNSEL DOES NOT INCLUDE THE RIGHT TO REQUIRE THE COURT TO APPOINT MORE THAN ONE ~~APPOINTED ATTORNEY~~ COUNSEL, EXCEPT IN A SITUATION WHERE THE RECORD CLEARLY SHOWS THAT THE FIRST APPOINTED COUNSEL IS NOT ADEQUATELY REPRESENTING THE ACCUSED*** 'THE RIGHT OF A DEFENDANT IN A CRIMINAL CASE TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE*** MAY INCLUDE THE RIGHT TO HAVE COUNSEL APPOINTED BY THE COURT*** DISCHARGED OR OTHER COUNSEL SUBSTITUTED, IF SHOWN*** THAT FAILURE TO DO SO WOULD SUBSTANTIALLY IMPAIR OR DENY THE RIGHT*** FUTHERMORE A JUDICIAL DECISION MADE WITHOUT GIVING A PARTY AN OPPORTUNITY TO PRESENT ARGUMENT OR EVIDENCE 'IS LACKING IN ALL THE ATTRIBUTES OF A JUDICIAL DETERMINATION.' (SPECTOR V. SUPERIOR COURT (1961) 55 CAL.2d 839, 843, 13 CAL. RPTR. 189, 192, 361 P.2d. FURTHER SUPPORT FOR DEFENDANTS CONTENTION THAT IT WAS ERROR TO DENY HIS MOTION WITHOUT ~~[illegible]~~ AN OPPORTUNITY FOR EXPLANATION COMES FROM THE LINE OF AUTHORITY BEGINNING WITH PEOPLE V. YOUDARS (1950) 96 CAL. APP. 2d 562, 569, 215 P.2d 743.

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ARGUMENT

~~STATEMENT OF FACTS~~ AND ARGUMENT

THE ONLY DETERMINATION A TRIAL COURT MUST MAKE WHEN PRESENTED WITH A TIMELY FARETTA MOTION IS WHETHER THE DEFENDANT HAS THE MENTAL CAPACITY TO WAIVE HIS CONSTITUTIONAL RIGHT TO COUNSEL WITH REALIZATION OF THE PROBABLE RISKS AND CONSEQUENCES OF HIS ACTION [CITATIONS.] IT IS NOT, HOWEVER, ESSENTIAL THAT DEFENDANT BE COMPETENT TO SERVE AS COUNSEL IN A CRIMINAL PROCEEDING [CITATION]; 'HIS TECHNICAL LEGAL KNOWLEDGE, AS SUCH, [IS] NOT RELEVANT TO AN ASSESSMENT OF HIS KNOWING EXERCISE OF THE RIGHT TO DEFEND HIMSELF.' (FARETTA V. CALIFORNIA, SUPRA, 422 U.S. [806] AT P. 836 [95 S.CT. 2525 AT P. 2541, 45 L.Ed.2d 562, 582]." ONE NEED NOT PASS A "MINI-BAR EXAMINATION" IN ORDER TO EXHIBIT THE REQUISITE CAPACITY TO MAKE A VALID FARETTA WAIVER. (PEOPLE V. TORRES (1979) 96 CAL.APP.3d 14, 22, 157 CAL.RPTR. 560.); ALMOST A DECADE AGO, THE UNITED STATES SUPREME COURT HELD THAT UNDER THE SIXTH AND FOURTEENTH AMENDMENTS, A CRIMINAL DEFENDANT WHO IS COMPETENT MAY WAIVE THE RIGHT TO COUNSEL AND REPRESENT HIMSELF. (FARETTA V. CALIFORNIA, SUPRA, 422 U.S. AT PP. 807, 819-821, 95 S.CT. AT PP. 2527, 2533-34.) THAT HOLDING WAS PREMISED ON THE "NEARLY UNIVERSAL CONVICTION, ON THE PART OF OUR PEOPLE AS WELL AS OUR COURTS, THAT FORSING A LAWYER UPON AN UNWILLING DEFENDANT IS CONTRARY TO HIS BASIC RIGHT TO DEFEND HIMSELF IF HE TRULY WANTS TO DO SO." (Id., AT P. 817, 95 S.CT. AT P. 2532.) AS QUOTED IN PEOPLE V. JOSEPH, (CAL. 1983) 196 CAL.RPTR. 339, 34 CAL.3d 936. STATEMENT OF FACTS

THE COURT ABUSED ITS DISCRETION AND WAS ERRONEOUSLY OVERREACHING IN PLACING A 1368 HOLD ON PETITIONER, AS THE COURT ACKNOWLEDGED THE PRIOR MARSDEN WITH JUDGE PRECKEL (HON.) DEEMING PETITIONER

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CONSENT OF ANY PARTY AFFECTED BY IT, ENTER INTO AN AGREEMENT TO EXTEND TIME FOR COMPLETION OF DISCOVERY OR FOR HEARING MOTIONS CONCERNING DISCOVERY OR TO REOPEN DISCOVERY AFTER A NEW TRIAL DATE HAS BEEN SET. THE AGREEMENT MAY BE INFORMAL BUT SHALL BE CONFIRMED BY A WRITING, IN NO EVENT SHALL THIS AGREEMENT REQUIRE A COURT TO GRANT A CONTINUANCE OR POSTPONEMENT OF THE TRIAL OF THE ACTION. STATEMENT OF FACTS - SEE EXHIBIT "A" PAGE 40 R.T. EXCERPT 200, LINES 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 26, 28; THE COURT: ALL RIGHT. YOU RAISED AN ISSUE TO -- MOTION TO COMPEL DISCOVERY, IS THERE STILL ANY LURKING DISCOVERY ISSUE? MR. ADAIR: FIRST OFF, MY -- AND IT CAN'T BE RESOLVED. -- FIRST OFF, I'VE SENT A LETTER TO HER (REFERRING TO D.A. MS. HANNA) REQUESTING CERTAIN ITEMS. MR. PLUMMER DID THE SAME, MR PLUMMER FILED A MOTION THAT WAS SERVED ON HER, -- DISCOVERY ISSUES WITH THE PROSECUTOR, -- CONCERNING PHOTOGRAPHS THAT I WOULD HAVE BEEN REQUESTING. -- I CALLED PRIOR ATTORNEYS MR PLUMMER AND -- (SEE EXHIBIT 'A' 'PAGE 41 R.T. EXCERPT 20, LINES 1, 9-12, 16-28) -- MR NEWTON, TO SEE IF WE COULD FIND THOSE. COULDN'T FIND THEM. THE COURT: AND THEN ANY OTHER PRETRIAL MOTIONS THAT YOU'VE BEEN DISCUSSING OR HAVE AN ISSUE ABOUT, THAT YOU'RE AWARE OF? MR. ADAIR: I THINK MR. BURTON HAS A NUMBER OF OTHER. THE COURT: ALL RIGHT. ANYTHING ADDITIONAL THAT YOU WANTED TO SAY IN RESPONSE TO THE SUMMARY OF THE COMPLAINTS THAT MR. BURTON GAVE? MR. ADAIR: NO YOUR HONOR. THE COURT: ALL RIGHT. [redacted] MR BURTON DID YOU HAVE ANYTHING NEW YOU WANTED TO ADD IN RESPONSE

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TO WHAT MR. ADAIR HAS TOLD THE COURT? THE DEFENDANT;
IF I JUST MAY HAVE A MOMENT TO THINK. LIKE, ONE MINUTE.
THE COURT; SURE. MR. ADAIR; YOUR HONOR, MR. BURTON HAS
TWO PAPERS HERE. THE FIRST TALKS ABOUT TRIAL STRATEGY,
AND I GUESS A DECISION OF COUNSEL OR THE DEFENDANT
AS TO STRATEGY; SEE EXHIBIT A, PAGE 38 R.T. EXCERPT 202, LINES 2 AND 3,
8, 9, 10, 11, 15, 16, 17, 21.; MR. ADAIR; MAY I PASS THESE ON TO YOU, YOUR
HONOR? THE COURT; SURE, THANK YOU. THE COURT; AND THEN YOU ALSO
IT LOOKS LIKE, PULLED SOME LANGUAGE OUT OF A CASE RELATING
TO THE FACT THAT THE DECISIONMAKING ON STRATEGY -- OF
DEFENSE COUNSEL BASED UPON THE DEFENDANT CONSENTING --
THE COURT; WE'LL MAKE THOSE PART OF THE COURT FILE AS
WELL AS YOUR VISITOR INMATE PRINTOUT SHEET. SO WE'LL
HAVE A RECORD OF THAT. THE COURT; OKAY. SEE EXHIBIT "A"
PAGE 39 R.T. EXCERPTS 203, LINES 1, 2-9, 16-18, PETITIONER DENIES
ALL OMITTED PORTIONS OF ALL EXCERPTS. MR ADAIR -- I DIDN'T BELIEVE
HE COULD WIN HIS CASE. THE COURT; ALL RIGHT. WELL.
-- MR. BURTON HAS CERTAIN THINGS HE WANTED TO HAVE, AND
THEN MR. ADAIR HAS EVALUATED AND DECIDED WHETHER OR NOT
IT SHOULD BE DONE; - TO THE EXTENT THERE ARE ANY
CONFLICTS MADE BY EITHER OF YOU IN YOUR STATEMENT, I DO
BELIEVE MR. ADAIR FOR EXAMPLE, -- PREARRANED OR RESPONDED
TO THAT QUICKLY IN RESPONSE TO A CALL BY MR. BURTON TO
MR. ADAIRS OFFICE. MR. ADAIR; IN OTHER WORDS, I SHOULD CON-
FIRM, (SEE EXHIBIT "A" PAGE 41 R.T. EXCERPT 205 LINES 4-8, 16-
18, 24-26. MR ADAIR; COULD I ADD ONE THING, YOUR HONOR?
THE COURT; YES YOU MAY. MR. ADAIR; IT JUST POPPED INTO MY MIND --

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-(MR. ADAIR) PART OF THE PROBLEM WITH DR. DIFRANCESCA---
AND I JUST REMEMBERED THIS--IS THAT I HAD ASKED HER
TO SEE MR. BURTON. SHE GAVE ME A TIME.-- WHEN I DID
TALK TO MR. BURTON, HE BASICALLY TOLD ME THAT HE
WAS UPSET ABOUT IT AND ALSO THAT HE WAS NOT GOING
TO BE INTERVIEWED BY DR. DIFRANCESCA OR ANY PSYCHOLOGIST.
THE COURT: OKAY. THEN AT THIS POINT WE HAD --I WAS ATTEMPTING
TO HAVE MS. HANNAH BE CALLED BACK BECAUSE WE DID
NEED TO DEAL WITH THE ISSUE OF THE EVIDENCE THAT
MIGHT BE ADMITTED. STATEMENT OF FACT- IT IS CLEAR
BY THE EXCERPTS THAT PETITIONER HAD CLEARLY MADE (ON 16 MARCH 05)
IT EVIDENT BY EXERCISING HIS RIGHT TO REFUSE A PREMEDITATED
PSYCHOLOGICAL INTERVIEW TO THE COURT AND CLEARLY
TO HIS ATTORNEY WHO AGAINST HIS WILL PLACED HIM UNDER
A 1368 HOLD, ONCE HE HAD ALREADY BEEN DEEMED LAWFULLY
COMPETENT BY THE HON. JUDGE PRECKLE 11-05-04- 5 MONTHS
PRIOR TO PETITIONERS INVOCATION OF HIS RIGHT TO SELF REPRESENTATION
AS FEDERALLY GUARANTEED BY THE 6TH AND 14TH U.S. CONST AMENDMENTS (3-16-05)
THE COURT AND MR. ADAIR WERE OVERREACHING, THE COURT
PREJUDICIALLY ERRED IN DENYING OR REFUSING TO RULE ON
HIS MOTION FOR SELF REPRESENTATION ON 16 MARCH 05, THE COURT
HAD RECOGNIZED DEFENDANT HAD MADE TWO FUNDAMENTALLY
~~DIFFERENT~~ SEPARATE MOTIONS - PETITIONER HAD RIGHT UNDER BOTH THE
6TH AND 14TH U.S. CONST. AMENDMENT TO [redacted] ~~HIS COUNSEL~~ AND/OR WAIVE
APPOINTED COUNSEL ~~DUE TO A WILFUL IMPAIRMENT OF~~ AND/OR
HIS DEFENSE BY COUNSEL ADAIR WAS ACTIVE CONFLICT
OF INTEREST AND INEFFECTIVE ASSISTANCE WITH NEGLIGENT RECKLESS MISREPRESENTATION

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SEE EXHIBIT A, PAGE 62, R.T. EXCERPT 251 DATE 6-01-05. LINES, 16-20 - WE WILL DEAL WITH THE MARSDEN MOTION, AT THIS TIME, SO WE WILL CLEAR THE COURTROOM AND PROCEED WITH THAT HEARING - STATEMENT OF RELEVANT FACTS, AGAIN THIS IS A THIRD FARETTA PRO SE MOTION, WHEREIN THE COURT RECOGNIZES TWO FUNDEMENTALLY SEPARATE MOTIONS, THAT THE COURT ERRED AND FAILED TO RULE CONCLUDING COUNSEL WAS PROPERLY REPRESENTING, DISREGARDING PETITIONERS CONSTITUTIONAL RIGHT TO SELF REPRESENTATION BY THE REASONING OF FARETTA. COUNSEL ON APPEALS MISSTATED THE FACTS CONCERNING PETITIONERS MOTIONS FOR SELF REPRESENTATION, AND THE 4TH DIST. DIV I COURT OF APPEALS ERRED IN DENYING PETITIONERS RELIEF AS INDICATED PETITIONER CLEARLY AND UNEQUIVICALLY MADE HIS FIRST MOTION FOR SELF REPRESENTATION ON 16 MARCH 05, NOT 24 MARCH 05, AND THE TRIAL COURT ABUSED IT'S DISCRETION BY FAILING TO RULE ON THE MOTION AND THERE BY PREJUDICIALLY AND ERRONEOUSLY DENIED PETITIONER HIS FEDERALLY GUARANTEED CONSTITUTIONAL RIGHT TO SELF REPRESENTATION AFTER HE WAS FOUND TO BE LAWFULLY COMPETENT TO WAIVE COUNSEL BY THE HON. JUDGE PACKEL ON 11-05-04, A FACT APPEALS COUNSEL PREJUDICIALLY MISSTATED ON DIRECT APPEAL, ADDITIONALLY THE CALIFORNIA SUPREME COURT ERRED ON ALL GROUNDS RAISED IN PETITIONS AND DID NOT CONSIDER THE FACTUAL CONST. ERRORS, SEE: JONES V. WOOD (9TH CIR. 1997) 114 F.3d 1002, SEE WILLIAMS V. TAYLOR (2000) 569 U.S. 362 [120 S.CT. 1479; 146 L.Ed. 2d 435]. SEE EXHIBIT A, PAGE 63, R.T. EXCERPT 252 LINES 7-11. THE COURT: MR BURTON, YOU HAVE INDICATED THAT IT IS YOUR DESIRE TO DISCHARGED YOUR

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ATTORNEY OF RECORD? THE DEFENDANT: I HAVE (NEGLIGENT) RECKLESS MISREPRESENTATION -- CONFLICT OF INTEREST, SEE EXHIBIT "A" PAGE 63 RT. EXCERPT 252, LINES 26-28 & PAGE 64 RT. EXCERPT 253 LINES 1-24. THE DEFENDANT: PERTAINING TO MY SIXTH AMENDMENT RIGHTS, FROM WHAT I UNDERSTAND, NO ONE CAN PREVENT A CLIENT FROM HAVING CONTACT WITH HIS ATTORNEY. ALSO, I HAVE SOME MOTIONS AND SOME PAPERS. THE COURT: WE WILL ONLY DEAL WITH THE MARSDEN HEARING AT THIS TIME -- I CANNOT HEAR YOUR MOTIONS BECAUSE THE DISTRICT ATTORNEY IS NOT PRESENT IN THESE PROCEEDINGS. THIS PROCEEDING IS CLOSED ONLY FOR THE PURPOSE OF YOUR MARSDEN HEARING WHICH I NOTE, FOR THE RECORD, HAS BEEN BROUGHT BEFORE, SEE EXHIBIT "A" PAGE 65, R.T. EXCERPT, 254 LINES 15-28 - THE COURT: [redacted] ~~THAT WHAT YOU ARE SAYING?~~ MR. ADAIR YOU ARE SAYING IS WORKING FOR THE PROSECUTION? THE COURT: IS THAT WHAT YOU ARE SAYING? THE DEFENDANT: YES SIR, I AM SAYING HE'S STATE INTERPOSED. THE COURT: HE'S WHAT? MR. ADAIR: HE'S STATE INTERPOSED. THE COURT: STATE INTERPOSED? THE DEFENDANT: HE'S COURT APPOINTED. THE COURT: HE'S WHAT? THE DEFENDANT: HE IS COURT APPOINTED. SEE EXHIBIT A PAGES 66 R.T. EXCERPT 255, LINES 2-8, 10-14, 16, 17, 19-28, SEE ALSO (READ). NOW SEE EXHIBIT A PAGE 67, R.T. EXCERPT 256, LINES 1-5, 10-16 THE DEFENDANT: WHAT I AM SAYING, SIR -- EXCUSE ME, IS THAT HE CAME BEFORE YOU. I AM LEGALLY BLIND, SO I CANNOT SEE YOUR NAME OR ANYTHING, I'M SORRY, HE CAME TO YOU (MEANING MR ADAIR) HE MANIPULATED ME TO GET A PEREMPTORY CHALLENGE. THE COURT: WAS A PEREMPTORY CHALLENGE FILED IN THIS CASE? MR. ADAIR: IT WAS YOUR HONOR. THE COURT: AGAINST WHO?

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1. MR. ADAIR; AGAINST JUDGE -- THE COURT HANOIAN? MR ADAIR: THANOIAN. YES, YOUR HONOR. STATEMENT OF FACT- THE HON. JUDGE HANOIAN WAS THE MAGISTRATE THAT PRESIDED OVER THE PRELIMINARY HEARING. AND BOUND THE PETITIONER OVER FOR TRIAL, PETITIONER BELIEVES LEGALLY SINCE HE HAD ALREADY BEEN IN HIS COURT, HE COULD NOT BE CHALLENGED, ALSO OF NOTE, THE HONORABLE JUDGE HALGREN IS THE JUDGE WHO SIGNED OFF ON GENUINE COURT RECORDS THE TRO PROTECTING THE PETITIONER AND HIS DAUGHTER DREONA BURTON, AND WAS A WITNESS TO FACT THAT THOMAS WAS STALKING DEFENDANT ON 23 FEB 04 APPROX AS HE WAS PRESENT AT OSC HEARING WHERE PETITIONER WAS INITIALLY THE PLAINTIFF, JUDGE CONVERTED PETITIONER INTO DEFENDANT, HER BALIFF ON COURT BUSINESS OFFICIAL GENUINE RECORDS SERVED MR THOMAS TRO IN HER COURTROOM, JUDGE AND PROSECUTOR DEPORTED HER AND HER BALIFF AS WITNESSES, JUDGE HALGREN WAS A BIAS, PREJUDICIAL TRIER OF FACT, FAILED TO ENFORCE HER OWN LAWFULLY SERVED ORDER, FAILED TO MAKE A DUAL ARREST OF MR. THOMAS ONCE IT WAS DISCLOSED THAT HE VIOLATED THE ORDER BY PHONING THE RESIDENCE OF PETITIONERS MINOR PROTECTED DAUGHTER DREONA BURTON AND KIDNAPED MINOR CHILD UNDER THE CRIMINAL STATUTES UNDER THE CALIFORNIA PENAL CODES BY MANIPULATING HER MOVEMENT VIA THE MOTHER MS. SANDERS WITHIN THE COUNTY OF S.D. CO. STATE OF CALIFORNIA JURISDICTION, JUDGE HALGREN FAILED TO HOLD MS. SANDERS IN CONTEMPT OF COURT FOR VIOLATING HER VERBATIM ORDERS, DENIED PETITIONER EQUAL PROTECTION ON THE TRO, EQUAL PROTECTION UNDER LAW SPECIFICALLY U.S. 14TH AMENDMENT

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STATEMENT OF FACTS

1 AS THE ORDER OF A FAMILY COURT JUDGE TAKES PRESEDENCE OVER ANY OTHER JUDGES RULING - SEE FEDERAL STATUTES - SEE EXHIBIT A, PAGE 68, R.T. EXCERPT 257 LINES 8 - 13, 20-28 THE DEFENDANT: ON THE RECORD (MEANING R.T. EXERPT 0348, EXHIBIT A PAGE 10 ON 3-16-05) BEFORE I CALLED MY MARSDEN, I STATED MY INTENTION TO GO PRO PER AT THAT TIME PER MY SIXTH AMENDMENT RIGHTS. AND I BELIEVE THE COURT ERRORED IN DENYING [redacted] ME MY RIGHT TO GO PRO PER. -- (HON.) JUDGE PRECKEL STATED (11-05-04) (EXHIBIT A" PAGE 8 R.T. EXERPT 21, LINES 1-15) THAT HE FOUND ME COMPETENT, FROM MY UNDERSTANDING, IF THE DEFENDANT IS COMPETENT AND HE HAS MADE A TIMELY MOTION TO GO PROPER, HE HAS THAT RIGHT TO DO SO. I MADE A TIMELY MOTION TO GO PRO PER AND I BEGAN TO EXPLAIN THAT TO THE JUDGE, BUT I WAS, I FELT THE COURT AND MR ADAIR WERE OVER REACHING AND PLACED ME UNDER A 1368 HOLD AND ORDERED ME TO UNDERGO A COMPETENCY HEARING. SEE EXHIBIT A" PAGE 69, R.T. EXCERPT 258, LINES 5-16, THE DEFENDANT; HOWEVER, I WAS FOUND COMPETENT, (PERTAINING TO 3-24-05) PRIOR TO MY MARSDEN (MOTION), I HAD ALSO MADE A FARETTA MOTION. I FELT THAT THE COURT ERRORED AND VIOLATED MY SIXTH AMENDMENT RIGHTS, THE JUDGE ALSO VIOLATED MY 14TH (AMENDMENT) RIGHTS TO DUE PROCESS. I'D LIKE TO MOTION THE COURT TO RELEASE ME FROM CUSTODY, I HAVE BEEN UNLAWFULLY DETAINED - SEE EXHIBIT A, PAGE 101 R.T. EXERPT 86 LINES 23-27. HON JUDGE PRECKEL; THE COURT; THE NEW TRIAL DATE WILL BE MONDAY MARCH 14TH AT 9:00 IN DEPARTMENT 11. ALL RIGHT, MR BURTON, YOU HAVE THE RIGHT TO A TRIAL WITHIN 60 DAYS

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OF THE FILING OF THE INFORMATION IN THIS CASE. SEE ALSO EXHIBIT "A" PAGE 44 R.T. EXCERPT 87, LINES STIPULATED AND SPECIFIED 1, 2, 3. THE COURT: HOW JUDGE ARECHEL THE NEW TRIAL DATE OF MONDAY MARCH 14TH, 05, UNDERSTANDING THAT AS A MATTER OF LAW, THE COURT WILL HAVE UP TO ["10"] DAYS AFTER THAT DATE TO ACTUALLY BEGIN TRIAL. ~~ON~~ STATEMENT OF FACTS AND (RELEVANT FACTUAL BACKGROUND, CONTENTION) PETITIONERS FEDERALLY GUARANTEED U.S. CONSTITUTIONAL RIGHTS TO A SPEEDY TRIAL WERE VIOLATED BY THE STATE COURT ON 3-24-05, AS BY STATUTORIAL LAW THE DEFENDANT HAD NOT BEEN BROUGHT TO TRIAL WITHIN LEGAL TIME FRAME, ~~ON COURT~~ PROPER AS REFERENCED BY, SEE EXHIBIT A PAGE 50 R.T. MINUTE ORDERS EXCERPT 0351. STATEMENT OF FACTS, ON 24 MARCH 05, AT 0911, PAST THE STATUTORILY LIMIT BY 11 MINUTES OF COURTS AND PROSECUTIONS LIMIT ON UNLAWFULLY DETAINING PETITIONER CONSTITUTIONALLY PETITIONER WAS TO HAVE BEEN DISCHARGED FROM COURT FOR NOT BRINGING HIM TO TRIAL IN THE LEGAL TIME FRAME, COUNSEL WAS INEFFECTIVE AND IN A DIRECT CONFLICT OF INTEREST, RATHER THAN MAKE THE PROPER 995 FOR DISMISSAL, HE PLACED A MOTION FOR AN UNCONSTITUTIONAL 1368 HOLD ON DEFENDANT PAST THE CONSTITUTIONAL LIMIT OF HOLDING DEFENDANT IN CUSTODY WITH NEGLIGENT AND RECKLESS PREJUDICIAL MISREPRESENTATION. SEE HOLLOWAY V. ARKANSAS 435 U.S. AT. 491, 98 S. CT AT. 1182 SEE THE BARKER FACTORS.

STATEMENT OF FACT- ON 16 MARCH 05, WHEN THE CASE WAS TRAILED FROM THE TRIAL DEADLINE DATE OF 3-24-05, PETITIONER WAS NOT PRESENT IN THE COURTROOM AND WAS'NT GIVEN NOTICE) AS INDICATED BY COUNSEL ADAIR. PETITIONER CONTENDS THAT HIS U.S. FEDERALLY INDICATED U.S. CONST 14TH AMENDMENT DUE PROCESS AND EQUAL PROTECTION CLAUSES WERE VIOLATED, BY HIS RIGHT TO BE PRESENT AT ALL STAGES OF TRIAL AND RIGHT TO NOTICE. ALTHOUGH PETITIONER HAS RAISED THIS ISSUE OF NOT BEING PRESENT IN COURT AS A MATTER OF RIGHT IN HIS PREVIOUSLY DENIED PETITION, HE JUST BECAME AWARE TO THE SPECIFICS UPON RECEIPT OF HIS TRANSCRIPTS AND EXCERPTS FROM APPELLATE COUNSEL APPROX 9/07. SEE U.S. EX REL. SOSTRE V. FESTA (9TH CIR. 1975) 513 F.2d 1313; ESTELLE V. MC GUIRE (1991) 502 U.S. 62, 70 [112 S. CT. 475, 481, 116 L. ED. 2d 385]. NOW SEE EXHIBIT "A" PAGE 38 R.T. EXCERPT 196, LINES 19-23, 25-28. (MARSDEN HEARING ON 3-16-05) THE COURT: SINCE YOU CAME ON THE CASE BACK IN NOVEMBER, DO YOU HAVE ANY WAY TO ESTIMATE HOW OFTEN YOU'VE EITHER MET FACE TO FACE OR BY TELEPHONE OR VIDEO? (REFERRING TO DEFENDANT) MR. ADAIR: I DON'T KNOW. -- I DON'T KNOW HOW MANY TIMES ON THE TELEPHONE WE'VE TALKED-- I DID NOT TALK TO HIM MONDAY BECAUSE I -- AFTER WE "TRAILED THE CASE FOR TWO DAYS," "I HAD TO LEAVE IMMEDIATELY TO MAKE AN APPOINTMENT DOWNTOWN. "HE (MR. BURTON, DEFENDANT) [WAS NOT] IN THE ["COURTROOM"] FOR THE TRAILING"

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~~THE UNITED STATES~~ CONTINUED

THIS COURT HAS OFTEN RECOGNIZED THE CONTITUTIONAL STATURE OF RIGHTS THAT, THOUGH NOT LITERALLY EXPRESSED IN THE DOCUMENT, ARE ESSENTIAL TO DUE PROCESS OF LAW IN A FAIR ADVERSARY PROCESS. IT IS NOW ACCEPTED, FOR EXAMPLE, THAT AN ACCUSED HAS A RIGHT TO BE PRESENT AT ALL STAGES OF THE TRIAL WHERE HIS ABSENCE MIGHT FRUSTRATE THE FAIRNESS OF THE PROCEEDINGS, SNYDER V. MASSACHUSETTS, 291 U.S. 97, 54 S.CT. 330, 78 L.ED. 674; TO TESTIFY ON HIS OWN BEHALF, SEE HARRIS V. NEW YORK, 401 U.S. 222, 225, 91 S.CT. 643, 645, 28 L.ED.2d 1; BROOKS V. TENNESSEE, 406 U.S. 605, 612, 92 S.CT. 1891, 1895, 32 L.ED.2d 358; CF. FERGUSON V. GEORGIA, 365 U.S. 570, 81 S.CT. 756, 5 L.ED.2d 783, AND TO BE CONVICTED ONLY IF HIS GUILT IS PROVED BEYOND A REASONABLE DOUBT, IN RE WINSHIP, 397 U.S. 358, 90 S.CT. 1068, 25 L.ED.2d 368; MULLANEY V. WILBUR, 421 U.S. 684, 95 S.CT. 1881, 44 L.ED.2d 508.

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STATEMENT OF FACTS.-

THE TRIAL COURT ABUSED IT'S DISCRETION IN FAILING TO CONDUCT A FULL INQUIRY WHICH WINDHAM MANDATES. THE DENIAL OF A TIMELY FARETTA MOTION REQUIRES REVERSAL PER SE. (PEOPLE V. JOSEPH (1983) 34 CAL.3d 936, 945-948.) THE SAME IS TRUE WHEN THE TRIAL COURT FAILS TO MAKE AN ADEQUATE INQUIRY REQUIRED BY WINDHAM IN CONSIDERING AN (ALLEGED) UNTIMELY MOTION FOR SELF REPRESENTATION. "SUCH FAILURE AREVENTED THE TRIAL COURT FROM MAKING A REASONED DECISION WITH RESPECT TO THE TIMELINESS AND APPROPRIATNESS OF THE MOTIONS, AS THE EXCERPTS SHOWS PETITIONER MADE HIS FIRST INVOKED 6TH AMENDMENT MOTION FOR SELF REPRESENTATION ON 16 MARCH05, WELL IN ADVANCE OF TRIAL, THAT THE TRIAL COURT ACKNOWLEDGED BY THE EXCERPTS CONTAINED IN SUPPORT OF THE FACTS IN THIS PETITION FOR RELIEF THAT RECOGNITION OF TWO FUNDAMENTALLY SEPARATION MOTIONS, THE COURT FAILED TO INQUIRE INTO PETITIONER'S KNOWINGLY AND INTELLIGENT FIRST MOST PER HIS 6TH AMENDMENT "INVOKED" FOR SELF REARESENTATION, THEREBY THE ERROR OCCURED BY THE COURT'S FAILURE TO RULE, AFTER HEARING PETITIONERS SECOND MOTION TO RELIEVE COUNSEL. THE MOTION FOR SELF REPRESENTATION PER 6TH U.S. CONST AMENDMENT WAS MADE AFTER DEFENDANT HAD BEEN DEEMED LAWFULLY COMPETENT ON 11-05-04 BY THE HON JUDGE PRECKEL. ADDITIONALLY THE COURT MISLED PETITIONER AFTER HE HAD BEEN INFORMED BY THE HON. JUDGE PRECKEL ON 11-05-04 THAT COURT PROCEEDINGS WILL GO FORTH WITHOUT AN EXAMINATION PER P.C. 1368, AFTER WHICH ON 24 MARCH05, AFTER PETITIONER MADE A FARETTA PRO SE VERBATIM MOTION, AND OBJECTION OVER COUNSEL'S 1368 MOTION, THE COURT WAS PREJUDICIAL AND OVERREACHING BY PLACING A 1368 HOLD ON

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~~motion, it would not have been an abuse of discretion.~~ (*People v. Crandell*, *supra*, 46 Cal.3d at p. 864.)

In so holding, the *Crandell* court had to distinguish the facts from those present in *People v. Bigelow* (1984) 37 Cal.3d 731, where the trial court also mistakenly believed the pro per defendant had no right to advisory counsel and therefore refused to exercise its discretion. In that case, the record clearly contained enough information for the Supreme Court to conclude that if the trial court had denied the motion, it would have been an abuse of discretion. (*Id.* at pp. 744-745.) Thus, reversal per se was warranted. (*Ibid.*)

The *Bigelow* court alternatively held that reversal per se was warranted because it was impossible to assess the impact of any prejudice from such an error. (*People v. Bigelow*, *supra*, 37 Cal.3d at pp. 744-745.) In doing so, the court analogized to cases where a timely *Faretta* motion is denied. (*Id.* at p. 745.)

Bigelow and *Crandell* therefore stand for the proposition that when the record shows it would have been an abuse of discretion to deny a motion, the court's failure to rule on the motion is an abuse of discretion which is reversible per se. ~~*Rivers* ignored this critical distinction and applied the *Crandell* rule of harmless error even though the record contained no information to allow the court to determine whether or not it would have been an abuse of discretion to deny the defendant's *Faretta* motion.~~

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~~THE COURT: The next proceedings were when we had the competency issues raised, the proceedings which were suspended. **And upon his return to court in July, he did not to my recollection ever again raise a Faretta issue.**~~

~~So because he did not call that to~~ my attention and because I feel that he was certainly capable of doing so -- he knew how to do so and he certainly raised many, many issues during the course of the trial -- I don't feel that was brought to the court in sufficient fashion for the court to rule. And, therefore, that ground for a motion for a new trial is denied. (R.T. 1248; [emphasis added].)

B. The Error

In *Faretta v. California*, *supra*, 422 U.S. at p. 836 [95 S.Ct. at p. 2541, 9 L.Ed.2d 799], the United States Supreme Court held that a defendant in a state criminal trial has a federal constitutional right under the Sixth and Fourteenth Amendments to represent himself without counsel if he voluntarily and intelligently chooses to do so. That right is among those "basic to our adversary system of criminal justice," as much a part of due process of law as the accused's right to notice of the charges, the right to call witnesses and to confront witnesses against him. (*Id.* at p. 818.)

Even though the defendant's choice may work to his detriment, it is a choice which must be honored out of "'that respect for the individual which is the lifeblood of the law.'" (*Id.* at p. 834, quoting *Illinois v. Allen* (1970) 397 U.S. 337, 350-351 [90 S.Ct. 1057, 1064, 25 L.Ed.2d 353] (Brennan, J., conc.).) The *Faretta*

III

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ARGUMENT IN SUPPORT OF GROUNDS 1 AND 2 - OF ATTACHED MEMORANDUM AND POINTS OF AUTHORITY SEE WIGGINS V. SMITH (2003) 539 U.S. 510, 123 S. CT. 2527, 2536, 156 L. Ed. 2d 471, 486 [FAILURE BY DEFENSE COUNSEL TO INVESTIGE AND DISCOVER AND PRESENT ADMISSIBLE EVIDENCE IN MITIGATION OF PENALTY WAS PREJUDICIAL]; IN re LUCAS (2004) 33 C. 4TH 682, 697, 725, 729, 16 C.R. 3d 331, 94 P. 3d 477 [SUPERFICIAL AND TARDY INVESTIGATION OF AVAILABLE MITIGATING EVIDENCE ON DEFENDANTS CHILDHOOD ABUSE CONSTITUTED DEFICIENT REPRESENTATION THAT WAS PREJUDICIAL WHERE THAT EVIDENCE WAS WEIGHTY]; IN re SEATON (2004) 34 C. 4TH 193, 200, 17 C.R. 3d 633, 95 P. 3d 896 [HABEAS CORPUS RELIEF LIES WHERE THERE IS INEFFECTIVE REPRESENTATION IN FAILURE TO OBJECT TO ALLEGED VIOLATION OF DEFENDANTS RIGHTS AT TRIAL AND REASONABLE PROBABILITY THAT FAILURE AFFECTS TRIAL'S OUTCOME] STATEMENT OF FACTS A SEE EXHIBIT A PAGE 51, RT EXCERPT 210, LINES 1, 3, 4, 6, 7, -20, 23-28, SEE ALSO EXHIBIT "A", PAGE 52, RT. EXCERPT 211, LINES 1-5, 16-28, SEE EXHIBIT "A", PAGE 53, RT. EXCERPT 212, LINES, 11, 15, 17-20, 24-28, SEE EXHIBIT "A" RT EXCERPT 213, PAGE 54, LINES 1-11, 13-21, 24-28, SEE EXHIBIT "A" PAGE 55, R.T. EXCERPT 214, LINES 1-6, 9, 10, 12, 13, 22-26, NOW SEE EXHIBIT "A", PAGE 56, R.T. EXCERPT 215 LINES 1-28 SEE ALSO EXHIBIT "A" PAGE 57, LINES 6-8, 13-22 RT EXCERPT 216, SEE EXHIBIT "A" PAGE 58, R.T. EXCERPT 217, LINES 4-6, 11-28, NOW SEE EXHIBIT "A" PAGE 59, R.T. EXCERPT 218/250 LINES 1-4, STATES "THE COURT: MR. ADAIR DO I NEED TO ADVISE HIM OF HIS CONSTITUTIONAL STATUTORY RIGHTS ON THE RECORD? MR. ADAIR: NO YOUR HONOR. THE COURT: ALL RIGHT. SEE 96 A.L.R. 5TH 327 [DENIAL OF OR INTERFERENCE WITH ACCUSED RIGHT TO HAVE ATTORNEY INITIALLY CONTACT ACCUSED; SUPERSEDING 18 A.L.R. 4TH 669, TEXT P. 335] SEE EXHIBIT "A", PAGE 40, RT EXCERPT 204, LINES 17-20, 22, 24-28.

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IN PROPER

ARGUMENT

EVIDENCE IS "MATERIAL", FOR PURPOSE OF PROSECUTION'S DUTY TO DISCLOSE FAVORABLE MATERIAL EVIDENCE TO THE DEFENDANT, WHEN THERE IS A REASONABLE PROBABILITY THAT HAD THE EVIDENCE BEEN DISCLOSED TO THE DEFENSE THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT, A REASONABLE PROBABILITY IS A PROBABILITY SUFFICENT TO UNDER MINE CONFIDENCE IN THE OUTCOME. WILLIAMS V. WOODFORD, 306 F.3d 665 (9TH CIR. 2002).

SEE WIGGINS V. SMITH (2003) 539 U.S. 510, 123 S.CT. 2527, 2536, 156 L.Ed. 2d 471, 486 [FAILURE BY DEFENSE COUNSEL TO INVESTIGATE AND DISCOVER AND PRESENT ADMISSIBLE EVIDENCE IN MITIGATION OF PENALTY WAS PREJUDICIAL]; IN re LUCAS (2004) 33 C.4TH 682, 697, 725, 729, 16 C.R. 3d 331, 94 P. 3d 477 [SUPERFICIAL AND TARDY INVESTIGATION OF AVAILABLE MITIGATING EVIDENCE ON DEFENDANTS CHILDHOOD ABUSE CONSTITUTED DEFICIENT REPRESENTATION THAT WAS PREJUDICIAL WHERE THAT EVIDENCE WAS WEIGHTY] SEE EXHIBIT B, PAGE 46; RT. EXCERPT 1051, LINES 20, 23-28. MR. ADAIR; ONE OF THE THINGS I STILL HAVE TO DO-- COME-- SOME EVIDENCE IN THERE. IF I CAN FIND IT-- WHAT MAY BE IN THERE IS, LIKE, A LIST OF CASES AGAINST MR. THOMAS THAT MY CLIENT HAS RESERVED. I WOULD BE INTRODUCING THAT AT 1:30, I SUPPOSE, BUT WE'VE TALKED ABOUT GOING INTO THE BACKPACK; BUT I JUST HAVEN'T HAD THE TIME TO DO IT. SEE EXHIBIT B, PAGE 49, RT EXCERPT 1109 LINES, 1-19, 21-24, 26-28 - COUNSEL FAILED TO TIMELY INVESTIGATE EXHIBIT F DEFENSE AND COURT BUSINESS RECORDS AS TRIER OF FACT WAS AN ~~FAVORABLE~~ MATERIAL WITNESS TO FACT.

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~~(STATEMENT OF FACTS)~~ ARGUMENT -

AS QUOTED IN FARETTA SUPRA"

THE LANGUAGE AND SPIRIT OF THE SIXTH AMENDMENT CONTEMPLATE THAT COUNSEL, LIKE THE OTHER DEFENSE TOOLS GUARANTEED BY THE AMENDMENT, SHALL BE AN AID TO A WILLING DEFENDANT - NOT AN ORGAN OF THE STATE INTERPOSED BETWEEN AN UNWILLING DEFENDANT AND HIS RIGHT TO DEFEND HIMSELF PERSONALLY. TO THRUST COUNSEL UPON THE ACCUSED, AGAINST HIS CONSIDERED WISH, THUS VIOLATES THE LOGIC OF THE AMENDMENT. IN SUCH A CASE, COUNSEL IS NOT AN ASSISTANT, BUT A MASTER; AND THE RIGHT TO MAKE A DEFENSE IS STRIPPED OF THE PERSONAL CHARACTER UPON WHICH THE AMENDMENT INSISTS. IT IS TRUE THAT WHEN A ~~LAWYER~~ ENGLISH DEFENDANT CHOOSES TO HAVE A LAWYER MANAGE AND PRESENT HIS CASE, LAW AND TRADITION MAY ALLOCATE TO COUNSEL THE POWER TO MAKE BINDING DECISIONS OF TRIAL STRATEGY IN MANY AREAS. CF. HENRY V. MISSISSIPPI, 379 U.S. 443, 451, 85 S.CT. 564, 569, 13 L.Ed.2d 408; BROOKHART V. JANIS 384 U.S. 1, 7-8, 86 S.CT. 1245, 1248-1249, 16 L.Ed.2d 314; FAY V. NOIA, 372 U.S. 391, 439, 83 S.CT. 822, 849, 9 L.Ed.2d 837. THIS ALLOCATION CAN ONLY BE JUSTIFIED, HOWEVER BY THE DEFENDANT'S CONSENT, AT THE OUTSET, TO ACCEPT COUNSEL AS HIS REPRESENTATIVE. AN UNWANTED COUNSEL "REPRESENTS" THE DEFENDANT ONLY THROUGH A TENUOUS AND UNACCEPTABLE LEGAL FICTION. UNLESS THE ACCUSED HAS ACQUIESCED IN SUCH REPRESENTATION, THE DEFENSE PRESENTED IS NOT THE DEFENSE GUARANTEED HIM BY THE CONSTITUTION, FOR, IN A VERY REAL SENSE, IT IS NOT HIS DEFENSE.

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~~Mr. Ferris, re: Burton #F02720~~ Exhibits

ARGUMENT IN SUPPORT OF GROUNDS I-DENIAL OF RIGHT TO SELF REARESENTATION AS QUOTED IN PEOPLE V. JOSEPH, (CAL. 1983) 196 CAL. RPTR. 339, 34 CAL. 3d 936:

THE ONLY DETERMINATION A TRIAL COURT MUST MAKE WHEN PRESENTED WITH A TIMELY FARETTA MOTION IS "'WHETHER THE DEFENDANT HAS THE MENTAL CAPACITY TO WAIVE HIS CONSTITUTIONAL RIGHT TO COUNSEL WITH A REALIZATION OF THE PROBABLE RISKS AND CONSEQUENCES OF HIS ACTION.' [CITATIONS.] IT IS NOT HOWEVER, ESSENTIAL THAT DEFENDANT BE COMPETENT TO SERVE AS COUNSEL IN A CRIMINAL PROCEEDING [CITATION]; 'HIS TECHNICAL LEGAL KNOWLEDGE, AS SUCH [IS] NOT RELEVANT TO AN ASSESSMENT OF HIS KNOWING EXERCISE OF THE RIGHT TO DEFEND HIMSELF.' (FARETTA V. CALIFORNIA, SUPRA, 422 U.S. [806] AT P. 836 [95 S.CT. 2525 AT P. 2541, 45 L.Ed. 2d 562, 582].)" (PEOPLE V. TERON, SUPRA, 23 CAL. 3d AT P. 113, 151 CAL. RPTR. 633, 588, P. 2d 773.) ONE NEED NOT PASS A "MINI-BAR EXAMINATION" IN ORDER TO EXHIBIT THE REQUISITE CAPACITY TO MAKE A VALID FARETTA WAIVER. (PEOPLE V. TORRES (1979) 96 CAL. APP. 3d 14, 22, 157 CAL. RPTR. 560.)

ALMOST A DECADE AGO THE U.S. SUPREME COURT HELD THAT UNDER THE SIXTH AND FOURTEENTH AMENDMENTS, A CRIMINAL DEFENDANT WHO IS COMPETENT MAY WAIVE THE RIGHT TO COUNSEL AND REPRESENT HIMSELF. (FARETTA V. CALIFORNIA, SUPRA, 422 U.S. AT PP. 807, 819-821, 95 S. CT. AT PP. 2527, 2533-34.) THAT HOLDING WAS PREMISED ON THE 'NEARLY UNIVERAL CONVICTION, ON THE PART OF OUR PEOPLE AS WELL AS OUR COURTS, THAT FORCING A LAWYER UPON AN UNWILLING DEFENDANT IS CONTRARY TO HIS BASIC RIGHT TO DEFEND HIMSELF IF HE TRULY WANTS TO DO SO." (Id. AT P. 817, 95 S. CT. AT P. 2532.

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As in *Nicholson*, the ~~record~~ EXCERPTS does not reflect an informed, thoughtful and reasonable exercise of discretion based on all the relevant *Windham* factors. Appellant did nothing to indicate that he was playing fast and loose with his rights under *Faretta* in order to delay the proceedings. (*People v. Nicholson*, *supra*, 24 Cal.App.4th at p. 593.)

The trial court abused its discretion in failing to conduct a full inquiry which *Windham* mandates. In addition, the record shows that the denial of the motion was an abuse of discretion since the court appeared to base its denial on the untimeliness of appellant's motion and the delay it would cause. Appellant's request to represent himself was not made for the purposes of disruption or delay, and there was no indication that any true disruption would result if the motion was granted.

C. <u>**The Error Requires Reversal**</u>

The denial of a timely *Faretta* motion requires reversal per se. (*People v. Joseph* (1983) 34 Cal.3d 936, 945-948.) The court in *People v. Hernandez*, *supra*, 163 Cal.App.3d 645, implied that the same is true when the trial court fails to make an adequate inquiry required by *Windham* in considering an untimely motion for self-representation. "Such failure prevented the trial court from making a reasoned decision with respect to the timeliness and appropriateness of the motion. ~~It also prevented the court from making a meaningful review of the trial court decision." (Id. at p. 658.)~~

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C. <u>The Error Requires Reversal</u>

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AS QUOTED IN—

FARETTA V. CALIFORNIA 95 S.Ct. 2525 (1975) 422 U.S. 806, 45 L.Ed. 2d 562

CONSTITUTIONAL LAW 268.1(1)

CRIMINAL LAW 641.1

SIXTH AND FOURTEENTH AMENDMENTS OF FEDERAL CONSTITUTION GUARANTEE THAT PERSON BROUGHT TO TRIAL IN ANY STATE OR FEDERAL COURT BE AFFORDED RIGHT TO ASSISTANCE OF COUNSEL BEFORE HE CAN BE VALIDLY CONVICTED AND PUNISHED BY IMPRISONMENT. U.S.C.A. CONST. AMENDS. 6, 14.

~~CRIMINAL LAW 662.4~~ ENOUGH

CONSTITUTIONAL LAW 257, 265, 268(6), 268.1(1)

SIXTH AMENDMENT RIGHTS OF ACCUSED IN ALL CRIMINAL PROSECUTIONS TO BE INFORMED OF NATURE AND CAUSE OF ACCUSATION, TO BE CONFRONTED WITH WITNESSES AGAINST HIM, TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR AND TO HAVE ASSISTANCE OF COUNSEL FOR HIS DEFENSE ARE PART OF THE "DUE PROCESS OF LAW" THAT IS GUARANTEED BY FOURTEENTH AMENDMENT TO DEFENDANTS IN THE CRIMINAL COURTS OF STATE. U.S.C.A CONST. AMENDS. 6, 14.

SEE CA. PENAL CODE § 1009 - UNDER PENAL CODE CERTAIN AMENDMENTS ARE PROHIBITED - THOSE THAT CHANGE THE OFFENSES CHARGED OR ALTER AN INFORMATION, TO ADD CHARGES NOT SUPPORTED BY THE EVIDENCE AT THE PRELIMINARY HEARING. THE FIFTH AMENDMENT GUARANTEES A CRIMINAL DEFENDANT THE RIGHT TO STAND TRIAL ONLY ON CHARGES MADE BY A GRAND JURY IN IT'S INDICTMENT. U.S.C.A CONST. AMEND 5 U.S.V. ADAMSON 291 F.3d 606 (9TH CIR 2002)

ARGUMENT

AS QUOTED IN FARETTA V. CALIFORNIA SUPRA. CITE AS 95 S.CT. 2525 (1975), 2532, 422 U.S. 816.

[2,3] THE SIXTH AMENDMENT INCLUDES A COMPACT STATEMENT OF THE RIGHTS NECESSARY TO A FULL DEFENSE: "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT... TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE".

BECAUSE THESE RIGHTS ARE BASIC TO OUR ADVERSARY SYSTEM OF CRIMINAL JUSTICE, THEY ARE PART OF THE "DUE PROCESS OF LAW" THAT IS GUARANTEED BY THE FOURTEENTH AMENDMENT TO DEFENDANTS IN THE CRIMINAL COURTS OF THE STATES. THE RIGHT TO NOTICE, CONFRONTATION, AND COMPULSORY PROCESS, WHEN TAKEN TOGETHER, GUARANTEE THAT A CRIMINAL CHARGE MAY BE ANSWERED IN A MANNER NOW CONSIDERED FUNDAMENTAL TO THE FAIR ADMINISTRATION OF AMERICAN JUSTICE - THROUGH THE CALLING AND INTERROGATION OF FAVORABLE WITNESSES, THE CROSS-EXAMINATION OF ADVERSE WITNESSES, AND THE ORDERLY INTRODUCTION OF EVIDENCE. IN SHORT, THE AMENDMENT CONSTITUTIONALIZES THE RIGHT IN AN ADVERSARY CRIMINAL TRIAL TO MAKE A DEFENSE AS WE KNOW IT. SEE CALIFORNIA V. GREEN, 399, U.S. 149, 176, 90 S.CT. 1930, 1944, 26 L.Ed.2d 489 (HARLAN, J. CONCURRING).

[4-6] THE SIXTH AMENDMENT DOES NOT PROVIDE MERELY THAT A DEFENSE SHALL BE MADE FOR THE ACCUSED; IT GRANTS TO THE ACCUSED PERSONALLY THE RIGHT TO MAKE HIS DEFENSE. IT IS THE ACCUSED, NOT COUNSEL, WHO MUST BE "INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION," WHO MUST BE "CONFRONTED WITH THE WITNESSES AGAINST HIM," AND WHO MUST BE ACCORDED "COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR." ALTHOUGH NOT STATED

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IN THE AMENDMENT IN SO MANY WORDS, THE RIGHT TO SELF-REPRESENTATION -TO MAKE ONE'S OWN DEFENSE PERSONALLY-IS THUS NECESSARILY IMPLIED BY THE STRUCTURE OF THE AMENDMENT. THE RIGHT TO DEFEND IS GIVEN DIRECTLY TO THE ACCUSED; FOR IT IS HE WHO SUFFERS THE CONSEQUENCES IF THE DEFENSE FAILS.

[7,8] THE COUNSEL PROVISION SUPPLEMENTS THIS DESIGN. IT SPEAKS OF THE "ASSISTANCE" OF COUNSEL, AND AN ASSISTANT, HOWEVER EXPERT, IS STILL AN ASSISTANT. THE LANGUAGE AND SPIRIT OF THE SIXTH AMENDMENT CONTEMPLATE THAT COUNSEL, LIKE THE OTHER DEFENSE TOOLS GUARANTEED BY THE AMENDMENT, SHALL BE AN AID TO A WILLING DEFENDANT-NOT AN ORGAN OF THE STATE INTERPOSED BETWEEN AN UNWILLING DEFENDANT AND HIS RIGHT TO DEFEND HIMSELF PERSONALLY. TO THRUST COUNSEL UPON THE ACCUSED, AGAINST HIS CONSIDERED WISH, THUS VIOLATES THE LOGIC OF THE AMENDMENT. IN SUCH CASE, COUNSEL IS NOT AN ASSISTANT, BUT A MASTER, AND THE RIGHT TO MAKE A DEFENSE IS STRIPPED OF THE PERSONAL CHARACTER UPON WHICH THE AMENDMENT INSISTS. IT IS TRUE THAT WHEN A DEFENDANT CHOOSES TO HAVE A LAWYER MANAGE AND PRESENT HIS CASE, LAW AND TRADITION MAY ALLOCATE TO THE COUNSEL THE POWER TO MAKE BINDING DECISIONS OF TRIAL STRATEGY IN MANY AREAS. CF. HENRY V. MISSISSIPPI, 379 U.S. 443, 451, 85 S.CT. 564, 569, 13 L.Ed.2d 408. THIS ALLOCATION CAN ONLY BE JUSTIFIED, HOWEVER, BY THE DEFENDANT'S CONSENT, AT THE OUTSET, TO ACCEPT COUNSEL AS HIS REPRESENTATIVE. AN UNWANTED COUNSEL "REPRESENTS" THE DEFENDANT ONLY THROUGH A TENUOUS AND UNACCEPTABLE LEGAL FICTION. UNLESS THE ACCUSED HAS ACQUIESCED IN SUCH REPRESENTATION, THE DEFENSE PRESENTED IS NOT THE DEFENSE GUARANTEED HIM BY THE CONSTITUTION, FOR

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IN A VERY REAL SENSE, IT IS NOT HIS DEFENSE.

"THE COURT OF STAR CHAMBER WAS AN EFFICIENT, SOMEWHAT ARBITRARY ARM OF ROYAL POWER. IT WAS AT THE HEIGHT OF IT'S CAREER IN THE DAYS OF THE TUDOR AND STUART KINGS. STAR CHAMBER STOOD FOR SWIFTNESS AND POWER; IT WAS NOT A COMPETITOR OF THE COMMON LAW SO MUCH AS A LIMITATION ON IT — A REMINDER THAT HIGH STATE POLICY COULD NOT SAFELY BE ENTRUSTED TO A SYSTEM SO CHANCY AS ENGLISH LAW. . . " L. FRIEDMAN, A HISTORY OF AMERICAN LAW 23 (1973). SEE GENERALLY 5 W. HOLDSWORTH, A HISTORY OF ENGLISH LAW 155-214 (1927).

THE RECOGNITION OF THE RIGHT OF SELF REPRESENTATION WAS NOT LIMITED TO THE STATE LAWMAKERS. AS WE HAVE NOTED, § 35 OF THE JUDICIARY ACT OF 1789, SIGNED ONE DAY BEFORE THE SIXTH AMENDMENT WAS PROPOSED, GUARANTEED IN FEDERAL COURTS THE RIGHT OF ALL PARTIES TO "PLEAD AND MANAGE THEIR OWN CAUSES PERSONALLY OR BY THE ASSISTANCE OF . . . COUNSEL." 1 STAT. 92. SEE 28 U.S.C. § 1654.

THE PENNSYLVANIA FRAME OF GOVERNMENT OF 1682, PERHAPS "THE MOST INFLUENTIAL OF THE COLONIAL DOCUMENTS PROTECTING INDIVIDUAL RIGHTS" 1 B. SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 130 (1971) (HEREINAFTER SCHWARTZ), PROVIDED: "THAT, IN ALL COURTS ALL PERSONS OF ALL PERSUASIONS MAY FREELY APPEAR IN THEIR OWN WAY, AND ACCORDING TO THEIR OWN MANNER, AND THERE PERSONALLY PLEAD THEIR OWN CAUSE THEMSELVES; OR, IF UNABLE, BY THEIR FRIENDS. . . . "

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CRIMINAL LAW 641.12(1)

New York Statute conferring upon judge in a nonjury criminal trial the power to deny counsel any opportunity to make summation of the evidence before rendition of judgement, as applied to defendant whose counsel was not permitted to make summation in criminal trial, Denied the assistance of Counsel that the Constitution guarantees. CPL N.Y. 320.20 SUBd 3(c); CPLR N.Y. 4016; PENAL LAW N.Y. 1965 §§ 110.-00, 160.05, 160.15, 265.05; U.S.C.A. Const. Amends 6, 14.

CRIMINAL LAW 710

RIGHT OF DEFENSE TO MAKE CLOSING SUMMARY OF EVIDENCE TO TRIER OF FACTS IN CRIMINAL CASE APPLIES IN BOTH JURY AND NON JURY TRIALS. U.S.C.A. CONST. AMENDS 6, 14

CRIMINAL LAW 641.1

THE RIGHT TO ASSISTANCE OF COUNSEL ENSURES TO THE DEFENSE IN A CRIMINAL TRIAL THE OPPORTUNITY TO PARTICPATE FULLY IN THE ADVERSARY FACT-FINDING PROCESS. U.S.CA CONST. AMENDS 6, 14

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Criminal Law 662(1)
Indictment and information 71.2(2)
It is accused, not counsel, who must be informed of nature and cause of accusation, who must be confronted with witnesses against him, and who must be accorded compulsory process for obtaining witnesses in his favor. U.S. CA. Const 6.

Criminal Law 636(1)
Accused has right to be present at all stages of trial where his absence might frustrate fairness of the proceedings. U.S.C.A. Const. amend 6.

Criminal Law 641.4(1)
Language and spirit of Sixth Amendment contemplate that counsel like other defense tools guaranteed by it, shall be an aid to willing defendant, and not an organ of state interposed between an unwilling defendant and his right to defend himself personally, U.S.C.A. Const Amend 6; 28 U.S.C.A. § 1654; FED. Rules. Crim. Proc. rule 44, 18 U.S.C.

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Criminal Law 641.4(1)
Where accused weeks before trial clearly and unequivocally declared to trial Judge that he wanted to represent himself and did not want Counsel, and record affirmatively showed that accused was literate, competent and understanding and that he was voluntarily exercising his informed free will, and where accused had been warned by trial Court that Court thought it was a mistake not to accept assistance of Counsel and that accused would be required to follow all "ground rules" of trial procedure, state court in Compelling accused to accept against his will a state-appointed public defender deprived him of his Constitutional right to Conduct his own defense, whatever the extent of his technical legal knowledge.
U.S.CA. Const. Amend 6; 28 U.S.CA. § 1654; FED. RULES CRIM. PROC. RULE 44, 18 U.S.C.A

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IT IS NOW ACCEPTED, FOR EXAMPLE, THAT AN ACCUSED HAS A RIGHT TO BE PRESENT AT ALL STAGES OF THE TRIAL WHERE HIS ABSENCE MIGHT FRUSTRATE THE FAIRNESS OF THE PROCEEDINGS, SNYDER V. MASSACHUSETTS, 291 U.S. 97, 54 S.CT. 330, 78 L.Ed. 674; TO TESTIFY ON HIS OWN BEHALF; SEE HARRIS V. NEW YORK, 401 U.S. 222, 225, 91 S.Ct. 643, 645, 28 L.Ed.2d 1; BROOKS V. TENNESEE, 406 U.S. 605, 612, 92 S.Ct. 1891, 1895, 32 L.Ed.2d 358; c.f. FERGUSON V. GEORGIA, 365 U.S. 570, 81 S.Ct. 756, 5 L.Ed.2d 783.

FOR EXAMPLE, IN re OLIVER, 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682 (1948), THE COURT REVERSED A SUMMARY CONTEMPT CONVICTION AT THE HANDS OF A "ONE-MAN GRAND JURY," AND HAD THIS TO SAY: "WE... HOLD THAT FAILURE TO AFFORD THE PETITIONER A REASONABLE OPPORTUNITY TO DEFEND HIMSELF AGAINST THE CHARGE OF FALSE AND EVASIVE SWEARING WAS A DENIAL OF DUE PROCESS OF LAW. A PERSON'S RIGHT TO REASONABLE NOTICE OF A CHARGE AGAINST HIM, AND AN OPPORTUNITY TO BE HEARD IN HIS DEFENSE - A RIGHT TO HIS DAY IN COURT - ARE BASIC IN OUR SYSTEM OF JURISPRUDENCE; AND THESE RIGHTS INCLUDE, AS A MINIMUM, A RIGHT TO EXAMINE THE WITNESSES AGAINST HIM, TO OFFER TESTIMONY, AND TO BE REPRESENTED BY COUNSEL." Id. AT 273, 68 S.Ct., AT 507. SEE ALSO ARGERSINGER V. HAMLIN, 407 U.S. 25, 27-33, 92 S.Ct. 2006, 2007-2011, 32 L.Ed.2d 530 (1972); GIDEON V. WAINWRIGHT, 372 U.S. 335, 344, 83 S.Ct. 792, 796-797, 9 L.Ed.2d 799 (1963)

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ACCORDINGLY, THE APPROPRIATE TEST FOR PREJUDICE FINDS ITS ROOTS IN THE TEST FOR MATERIALITY OF EXCULPATORY INFORMATION NOT DISCLOSED TO THE DEFENSE BY THE PROSECUTION, UNITED STATES V. AGURS, 427 U.S., AT 104, 112-113, 96 S.CT., AT 2397, 2401-2402, AND IN THE TEST FOR MATERIALITY OF TESTIMONY MADE UNAVAILABLE TO DEFENSE BY GOVERNMENT DEPORTATION OF A WITNESS, UNITED STATES V. VALENZUELA-BERNAL, SUARA, 458 U.S., AT 872-874, 102 S.CT., AT 3449-3450.

AGUMENT IN SUPPORT OF [redacted] GROUNDS

AS QUOTED IN FARETTA V. CALIFORNIA 422 U.S. 820 95 S.CT 2525 (1975)

THE UNITED STATES COURT OF APPEALS HAVE REPETEDLY HELD THAT THE RIGHT OF SELF-REPRESENTATION IS PROTECTED BY THE BILL OF RIGHTS. IN UNITED STATES V. PLATTNER, 330 F.2d 271, THE COURT OF APPEALS FOR THE SECOND CIRCUIT EMPHASIZED THAT THE SIXTH AMENDMENT GRANTS THE ACCUSED THE RIGHTS OF CONFRONTATION, OF COMPULSORY PROCESS FOR WITNESSES IN HIS FAVOR, AND OF ASSISTANCE OF COUNSEL AS MINIMUM PROCEDURAL REQUIREMENTS IN FEDERAL CRIMINAL PROSECUTIONS. THE RIGHT TO THE ASSISTANCE OF COUNSEL, THE COURT CONCLUDED, WAS INTENDED TO SUPPLEMENT THE OTHER RIGHTS OF THE DEFENDANT AND NOT TO IMPAIR "THE ABSOLUTE AND PRIMARY RIGHT TO CONDUCT ONE'S OWN DEFENSE IN PROPRIA PERSONA" - Id., AT 274. THE COURT FOUND SUPPORT FOR ITS DECISION IN THE LANGUAGE OF THE 1789 FEDERAL STATUTES AND RULES GOVERNING CRIMINAL PROCEDURE, SEE 28 U.S.C. §1654, AND FED. RULE CRIM. PROC. 44; IN THE MANY STATE CONSTITUTIONS THAT EXPRESSLY GUARANTEE SELF-REPRESENTATION; AND IN THIS COURT'S RECOGNITION OF THE RIGHT IN ADAMS AND PRICE. ON THESE GROUNDS THE COURT OF APPEALS HELD THAT IMPLICIT IN THE FIFTH AMENDMENTS GUARANTEE OF DUE PROCESS OF LAW AND IMPLICIT ALSO IN THE SIXTH AMENDMENTS GUARANTEE

ARGUMENT CONTINUED

OF A RIGHT TO THE ASSISTANCE OF COUNSEL, IS "THE RIGHT OF THE ACCUSED PERSONALLY TO MANAGE HIS OWN DEFENSE IN A CRIMINAL CASE." 330 F.2d AT 274. SEE ALSO U.S. EX REL. MALDONADO V. DENNO, 348 F.2d 12, 15 (CA 2

BECAUSE THESE RIGHTS ARE BASIC TO OUR ADVERSARY SYSTEM OF CRIMINAL JUSTICE, THEY ARE PART OF THE "DUE PROCESS OF LAW" THAT IS GUARANTEED BY THE FOURTEENTH AMENDMENT TO DEFENDANTS IN THE CRIMINAL COURTS OF THE STATES. (SEE GIDEON V. WAINWRIGHT 372 U.S. 335, 83 S.CT. 792, 9 L.Ed.2d 799.) THE RIGHTS TO NOTICE CONFRONTATION AND COMPULSORY PROCESS, WHEN TAKEN TOGETHER, GUARANTEE THAT A CRIMINAL CHARGE MAY BE ANSWERED IN A MANNER NOW CONSIDERED FUNDAMENTAL TO THE FAIR ADMINISTRATION OF AMERICAN JUSTICE — THROUGH THE CALLING AND INTERROGATION OF FAVORABLE WITNESSES, THE CROSS-EXAMINATION OF ADVERSE WITNESSES, AND THE ORDERLY INTRODUCTION OF EVIDENCE. IN SHORT, THE AMENDMENT CONSTITUTIONALIZES THE RIGHT IN AN ADVERSARY CRIMINAL TRIAL TO MAKE A DEFENSE AS WE KNOW IT. SEE CALIFORNIA V. GREEN, 399 U.S. 149, 176, 90 S.CT. 1930, 1944, 26 L.Ed.2d 489 (HARLAN, J., CONCURRING.

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MEMORANDUM OF POINTS AND AUTHORITY IN SUPPORT OF GROUNDS 2 - ERRONEOUS DENIAL of FARETTA MOTION

1. ARGUMENT

AS QUOTED IN PEOPLE V. JOSEPH, 196 CAL RPTR. 339, 34 CAL. 3d 936, (1983). - SINCE IGNORED. THE FEDERAL COURTS ARE IN GENERAL AGREEMENT WITH CALIFORNIA COURTS ON THIS ISSUE. AT LEAST TWO FEDERAL CIRCUIT COURTS OF APPEALS HAVE HELD THAT THE ERRONEOS DENIAL OF A TIMELY ASSERTED FARETTA MOTION REQUIRES REVERSAL OF THE JUDGEMENT WITHOUT AN ASSESSMENT OF PREJUDICE. (BITTAKER V. ENOMOTO (9TH CIR. (1978) 587 F.2d 400, 402-403) CERT. DEN. (1979) 441 U.S. 913, 99 S.CT. 2013, 60 L.Ed.2d 386; CHAPMAN V. UNITED STATES, SUPRA, 553 F.2d AT [34 CAL 3d 948] PP. 891-892.) TO VIEW PRECEDING LINK PLEASE CLICK HERE A FEW PRE-FARETTA CIRCUIT COURT OF APPEALS DECISIONS REACHED THE SAME CONCLUSION UNDER THE FEDERAL CONSTITUTION (UNITED STATES V. PLATTNER (2d CIR. 1964) 330 F.2d 271, 273) OR THE FEDERAL STATUTES. (UNITED STATES V. DOUGHERTY, SUPRA, 474 F.2d AT PP. 1127-1130; UNITED STATES V. PRICE (9TH CIR. 1973) 474 F.2d 1223, 1227 [INTERPRETING PRO SE RIGHTS GUARANTEED UNDER 28 U.S.C. § 1654]; SEE ALSO LOWE V. UNITED STATES (7TH CIR. 1969) 418 F.2d 100, 103 [DICTUM] THIS COURT'S ENUNCIATION OF A PER SE RULE OF REVERSAL WHERE FARETTA ERROR IS INVOLVED IS THUS CONSISTENT WITH THE HOLDINGS OF MOST COURTS WHICH HAVE CONSIDERED THE ISSUE. ANYTHING SHORT OF A PER SE RULE IS UNWORKABLE AND WOULD UNDERMINE THE FARETTA DOCTRINE IT SELF. SINCE THE DENIAL OF APPELLANT'S FUNDAMENTAL PRO SE RIGHT CANNOT "BE REDEEMED THROUGH.. THE SUBSEQUENT CONCLUSION THAT [APPELLANT'S] PRACTICAL POSITION HAS NOT BEEN DISADVANTAGED" (UNITED STATES V. DOUGHERTY, SUPRA, 473 F.2d AT P. 1128), THE JUDGEMENT MUST BE REVERSED.